

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRANDON LO, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

OXNARD EUROPEAN MOTORS, LLC and
OXNARD MB, LLC,

Defendants.

CASE NO. 11CV1009 JLS (MDD)
CLASS ACTION
FINAL ORDER AND JUDGMENT

On May 9, 2011, Plaintiff Brandon Lo (“Plaintiff” or “Class Representative”) filed the above-captioned class action lawsuit (“Lawsuit”) against Defendant Oxnard European Motors, LLC, d/b/a Mercedes Benz of Oxnard (“Defendant” or “MBOO”). Plaintiff asserted class claims against MBOO under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. Specifically, Plaintiff alleged that MBOO violated the TCPA by sending text messages to his cellular telephone, without “prior express consent,” using an “automatic telephone dialing system” and using an “artificial or prerecorded voice.” MBOO denied any and all liability alleged in the Lawsuit.

After extensive arm’s length negotiations, including mediation before The Honorable Mitchell D. Dembin, Plaintiff and MBOO (jointly referred to as the “Parties”) entered into a Class Action Settlement Agreement (“Agreement”), which is subject to review under Fed. R. Civ. P. 23.

1 On November 28, 2011, the Parties filed the Agreement, along with their Joint Motion for
2 Preliminary Approval of Class Action Settlement Agreement (“Preliminary Approval Motion”).

3 On December 15, 2011, upon consideration of the Agreement, Preliminary Approval
4 Motion, and the record, the Court entered an Order of Preliminary Approval of Class Action
5 Settlement (“Preliminary Approval Order”). Pursuant to the Preliminary Approval Order, the
6 Court, among other things: (i) preliminarily certified a class of plaintiffs for settlement purposes
7 only (hereinafter referred to as the “Class Members”) with respect to the claims asserted in the
8 Lawsuit; (ii) preliminarily approved the proposed settlement; (iii) appointed Plaintiff Brandon Lo
9 as the Class Representative; (iv) appointed HYDE & SWIGART, the LAW OFFICES OF
10 DOUGLAS J. CAMPION, and the KAZEROUNI LAW GROUP PC as Class Counsel; and (v) set
11 the date and time of the Final Approval Hearing (“Fairness Hearing”).

12 The Parties filed their Joint Motion for Final Approval of Class Action Settlement
13 Agreement (“Final Approval Motion”). Pursuant to their Final Approval Motion, the Parties
14 request final certification of the settlement class under Fed. R. Civ. P. 23(b)(2) and (b)(3) and final
15 approval of the proposed class action settlement.

16 On May 25, 2012, a Fairness Hearing was held by The Honorable Janis L. Sammartino,
17 pursuant to Fed. R. Civ. P. 23 to determine whether the Lawsuit satisfies the applicable
18 prerequisites for class action treatment and whether the proposed settlement is fundamentally fair,
19 reasonable, adequate, and in the best interest of the Class Members and should be approved by the
20 Court.

21 The Court has read and considered the Agreement, Final Approval Motion, and the record.
22 All capitalized terms used herein have the meanings defined herein and/or in the Agreement.

23 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

24 **1. JURISDICTION**

25 The Court has jurisdiction over the subject matter of the Lawsuit and over all settling
26 parties hereto.

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1 2. CLASS MEMBERS

2 Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), the Lawsuit is hereby finally certified, for
3 settlement purposes only, as a class action on behalf of the following Class Members with respect
4 to the claims asserted in the Lawsuit:

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6 All persons who received text messages from Defendant or its agents between
7 October 16, 2009 and July 9, 2011 (the "Class Period") and who responded to such
8 text messages by sending text messages to Defendant or its agents, opting out of
9 receiving further text messages from Defendant, and to whom Defendant or its
10 agents sent confirmatory text messages acknowledging receipt of the opt out
11 messages (hereinafter referred to as the "Settlement Class") as identified in
12 Defendant's records to be provided to the Claims Administrator.

13 All Settlement Class Members are persons that lived in the State of California at the
14 time of receiving and opting out of further receipt of such text messages.

15 Excluded from the Settlement Class are Defendant, any parent companies, affiliates
16 or subsidiaries, or any employees thereof, and any entities in which any of such
17 companies has a controlling interest; the Judge or Magistrate Judge to whom the
18 Action is assigned and any member of those Judges' immediate families.

19 3. CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT

20 Pursuant to Fed. R. Civ. P. 23, the Court finally certifies Plaintiff Brandon Lo as
21 the Class Representative and HYDE & SWIGART, the LAW OFFICES OF DOUGLAS J.
22 CAMPION, and the KAZEROUNI LAW GROUP, APC as Class Counsel.

23 4. NOTICE AND CLAIM PROCESS

24 Pursuant to the Court's Preliminary Approval Order, the third-party class action
25 administrator, complied with the approved notice process. MBOO mailed the summary notice to
26 each of the 203 Class Members. The full notice was posted on the Settlement Website.
27 Considering the Class Members were identifiable, the form and method for notifying the Class
28 Members of the settlement and its terms and conditions were in conformity with this Court's
Preliminary Approval Order and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and
due process, and constituted the best notice practicable under the circumstances.

The Court finds that the notice process was clearly designed to advise the Class Members

1 of their rights. Further, the Court finds that the claims process set forth in the Agreement was
 2 followed and that said process was the best practicable notice procedure under the
 3 circumstances.

4 5. FINAL CLASS CERTIFICATION

5 The Court again finds that the Lawsuit satisfies the applicable prerequisites for class
 6 action treatment under Fed. R. Civ. P. 23, namely:

- 7 A. The Class Members are so numerous that joinder of all of them in the
 8 Lawsuit would be impracticable;
- 9 B. There are questions of law and fact common to the Class Members,
 10 which predominate over any individual questions;
- 11 C. The claims of the Plaintiff are typical of the claims of the Class
 12 Members;
- 13 D. The Plaintiff and Class Counsel have fairly and adequately represented
 14 and protected the interests of all of the Class Members; and
- 15 E. Class treatment of these claims will be efficient and manageable, thereby
 16 achieving an appreciable measure of judicial economy, and a class action
 17 is superior to other available methods for a fair and efficient adjudication
 18 of this controversy.
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20 The Court finds that the settlement of the Lawsuit, on the terms and conditions set forth in
 21 the Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest
 22 of the Class Members, especially in light of the benefits to the Class Members; the strength of the
 23 Plaintiff's case; the complexity, expense, and probable duration of further litigation; the risk and
 24 delay inherent in possible appeals; and, the risk of collecting any judgment obtained on behalf of
 25 the class.

26 5. SETTLEMENT TERMS

27 The Agreement, which has been filed with the Court and shall be deemed incorporated
 28 herein, and the proposed settlement are finally approved and shall be consummated in accordance

1 with the terms and provisions thereof, except as amended by any order issued by this Court. The
 2 material terms of the Agreement include, but are not limited to, the following:

- 3 A. MBOO shall pay \$49,100.00 into a Settlement Fund maintained by the
 4 Claims Administrator established for the purpose of resolving this matter.
 5 From this Settlement Fund, the Claims Administrator shall pay the
 6 following: Pay Class Counsel \$12,275 in attorneys' fees and \$1,537.34 in
 7 costs, which does not include the \$4,500 for the reimbursement of the
 8 costs incurred by the Claims Administrator for its fees and costs, which
 9 are addressed below;
 10 B. The Claims Administrator shall pay itself the sum of \$4,500.00 for its
 11 fees and costs incurred;
 12 C. Pay the Plaintiff \$1,500.00 for his services as the Class Representative;
 13 and
 14 D. Pay each of the 22 Class Members who made a timely accepted claim the
 15 pro rata amount of the funds remaining after paying the above amounts,
 16 approximately \$1,331.25;

18 6. EXCLUSIONS AND OBJECTIONS

19 The Class Members were given an opportunity to exclude themselves from the settlement.
 20 No such requests for exclusion were received.

21 The Class members were also given an opportunity to object to the settlement. No such
 22 objections were received.

23 7. RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT

24 The Class Representative, Class Members, and their successors and assigns are
 25 permanently barred and enjoined from instituting or prosecuting, either individually or as a class,
 26 or in any other capacity, any of the Released Claims against any of the Released Parties, as set
 27 forth in the Agreement. Pursuant to the release contained in the Agreement, the Released Claims
 28 are compromised, settled, released, discharged, and dismissed with prejudice by virtue of these

1 proceedings and this order.

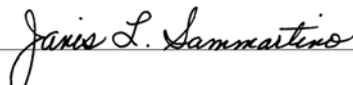
2 The Lawsuit is hereby dismissed with prejudice in all respects.

3 This order is not, and shall not be construed as, an admission by MBOO of any liability or
4 wrongdoing in this or in any other proceeding.

5 Without affecting the finality of this Final Order and Judgment in any way, the Court
6 hereby retains continuing and exclusive jurisdiction over the Parties and all matters relating to the
7 Lawsuit and/or Agreement, including the administration, interpretation, construction,
8 effectuation, enforcement, and consummation of the settlement and this order.

9 **IT IS SO ORDERED.**

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11 DATED: May 29, 2012

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14 Honorable Janis L. Sammartino
15 United States District Judge
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